Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-534

INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO;

DISTRICT LODGE NO. 169 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS; AND

LOCAL LODGE 2369 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS,

Petitioners,

vs.

OXCO BRUSH DIVISION OF VISTRON CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The Opinions of the United States Court of Appeals for the Sixth Circuit from which the Petitioners seek a Writ of Certiorari, and the Opinion of the United States District Court for the Middle District of Tennessee which was taken on appeal by the Petitioners to the Sixth Circuit Court of Appeals, are not reported. The Opinions are

appended to the Petition for a Writ of Certiorari. The Opinion of the Sixth Circuit Court of Appeals was filed on June 9, 1976 and the Decision and Order of the United States District Court for the Middle District of Tennessee was filed December 12, 1974.

JURISDICTION

Respondent does not question the jurisdiction as set forth in the Petition.

QUESTIONS PRESENTED

The Petition sets forth a number of questions assertedly presented to this Court in the form of argument and discussion of the facts of the case. The Respondent submits that the questions presented are as follows:

1. Whether the Court of Appeals properly ruled that the Petitioners were not entitled to a stay of the Respondent's damage action pending arbitration of the dispute between the parties where the collective bargaining contract did not provide for employer-initiated grievances.

2. Whether the Court of Appeals properly held that where the Petitioner labor organizations participated in, ratified or condoned the work stoppage by the Petitioner Local Lodge's members through the participation of the Local Lodge's officers, the attempts by agents of the Petitioners District Lodge and Grand Lodge to obtain concessions from the Respondent during such work stoppage, and the failure of any of the Petitioners to take any action whatsoever to attempt to effect an end to the work stoppage, the evidence sufficiently supported the Jury's verdict awarding damages to the Respondent for damages sustained by it as a result of such work stoppage.

3. Whether the Court of Appeals properly held that liability of the Petitioners Grand Lodge and District Lodge for damages sustained by the Respondent as a result of the unlawful work stoppage in violation of the no-strike clause in its collective bargaining agreement with the District Lodge and Local Lodge could be predicated on the failure of those organizations to use every reasonable means available to them to attempt to effect an end to the wildcat strike by the Respondent's employees.

4. Whether the Court of Appeals properly held that the Petitioners were not denied procedural due process or the right to a fair trial by the so-called errors assertedly committed by the District Court.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The Respondent agrees that Section 301 (a) of the National Labor Relations Act, as amended, 29 U. S. C. § 185 (a) is involved, but does not feel that any of the other statutes or constitutional provisions referred to by the Petitioners are involved in this proceeding.

STATEMENT OF THE CASE

In order to simplify the Statement of the Case for the Court's reference, the Respondent submits its counter-statement of the case.

The Petitioners and Respondent were parties to a collective bargaining agreement at all times relevant hereto which contained a no-strike clause and a broad grievance and arbitration provision providing for the initiation of grievances by either employees or the Union. On May 5, 1972, a wildcat strike occurred at the Respondent's plant when 161 of the Respondent's 215 employees represented by the Union walked out of the plant.

During the course of the walkout which lasted approximately eight days, representatives of the Petitioners Grand Lodge and District Lodge met with representatives of the Respondent and attempted to obtain concessions from the Respondent as an inducement for the employees to return to work. None of the Petitioners took any other action whatsoever to attempt to bring an end to the illegal work stoppage. All of the officers of the Petitioner Local Lodge participated in the walkout.

As a result of the illegal walkout, the Respondent sustained substantial damages. The Respondent brought this action against the Petitioners to recover those damages. Following a trial before a jury in the United States District Court for the Middle District of Tennessee, the jury found in favor of the Respondent and awarded damages in the amount of $60,000.

The Petitioners filed a Motion for a new trial or for judgment N. O. V. which was overruled by the District

Court. Petitioners appealed the jury award and District Court decision overruling their Motion for a new trial to the United States Court of Appeals for the Sixth Circuit. In a *per curiam* decision, the Court of Appeals affirmed the judgment of the lower Court.

The Petitioners also filed a Motion for Rehearing with the Court of Appeals which was overruled. Petitioners then filed a Petition for Writ of Certiorari to this Court seeking review of the decision of the Court of Appeals.

ARGUMENT

The Respondent submits that the Petitioners have failed to sustain their burden of establishing under Rule 19 of the Rules of this Court that there are special and important reasons why a Writ of Certiorari should be granted. The decision below did not involve an important question of federal law which has not been, but should be, settled by this Court; nor has the Court of Appeals decided a federal question in a way to conflict with applicable decisions of this Court or of another Court of Appeals on the same matter. The Respondent submits that the Petition for Writ of Certiorari should be denied. The specific questions raised by the Petition for Writ of Certiorari are discussed hereinbelow.

Stay Pending Arbitration.

The Petitioners contend that the District Court erred in refusing to stay the Respondent's damage action under Section 301 of the National Labor Relations Act, as

amended, pending arbitration of the Union's request to have the question of whether or not a breach of the contract had occurred determined by an Arbitrator. The District Court denied the Petition finding that the grievance procedure set forth in the collective bargaining agreement between the parties did not provide for access to the procedure by the Respondent and that, therefore, under the overwhelming weight of authority established by the Courts of Appeal and by this Court, the Respondent's action should not be stayed. The Court of Appeals affirmed the District Court's denial of a Petition for Stay.

Under the decisions of this Court, it is fundamental that an agreement to arbitrate is contractual in nature and that a party cannot be compelled to arbitrate a dispute which it has not agreed to arbitrate. *Atkinson v. Sinclair Refining Co.*, 370 U. S. 238 (1962); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U. S. 574 (1960). Where the collective bargaining agreement which gives rise to the claim for arbitration provides that arbitration may be invoked only at the option of the Union or an employee, the company is not required to submit its claim for damages to arbitration but may enforce its rights under Section 301. *Atkinson v. Sinclair Refining Co., supra; Affiliated Food Distributors, Inc. v. Local Union 229*, 483 F. 2d 418 (3d Cir. 1973); *Firestone Tire & Rubber Company v. United Rubber Workers*, 476 F. 2d 603 (5th Cir. 1973); *G. T. Schjeldahl Co. v. Local 1680*, 393 F. 2d 502 (1st Cir. 1968).

The Petitioners rely for their position on *Drake Bakeries v. Local No. 50, American Bakery & Confectionery Workers International*, 370 U. S. 254 (1962). In *Drake*, the collective bargaining agreement contained a compre-

hensive grievance procedure available to both employees and employer and provided for compulsory arbitration at the request of either party of all "complaints, disputes or grievances" between the parties. The Third Circuit Court of Appeals has specifically considered the argument made by the Petitioners in the instant case and found *Drake Bakeries* inapposite. *Boeing Co. v. United Auto Workers*, 370 F. 2d 969 (3d Cir. 1967).

Both the District Court and the Court of Appeals properly held in the instant case that the Respondent's damage action should not be stayed pending any request for arbitration by the Petitioners.

Liability of the Petitioners Grand Lodge, District Lodge and Local Lodge.

The second and third questions presented are interrelated and will be discussed together.

Overruling the Petitioners' Motion for New Trial, the District Court referred to the provisions of the collective bargaining agreement between the parties, the organizational structure of the International Association of Machinists & Aerospace Workers and the provisions of its constitution. The District Court found that the Grand Lodge has "domination, supervision and control" of the District Lodges and Local Lodges and held that the "most apt legal description of the relationship between the Grand Lodge and the Local Lodge is that the Local is the disclosed agent of the Grand Lodge." (A-22). (References herein are to the Appendix to the Petition for Writ of Certiorari and are designated "A" followed by the page to which reference is made.) The Court further found

that the evidence supported a conclusion that the Petitioners Grand Lodge and District Lodge had ratified or condoned the actions of the Local Lodge and its members in violating the terms of the collective bargaining agreement with the Respondent. The Court found that the issue of liability had been properly presented to the jury with the instructions that in making the determination as to whether or not the Grand Lodge or District Lodge had "participated in, authorized, ratified or otherwise engaged in the conduct which resulted in the breach of the contract" the jury could consider, among other things:

(1) participation in the strike by the officers of the union;

(2) the taking or failure to take affirmative action to prevent or terminate the work stoppage;

(3) whether any activities taken were taken in good faith or were only the giving of token lip service;

(4) whether there was any disciplinary action permissible or authorized by the constitution, taken or threatened;

(5) if none were taken or threatened, whether such lack of action was due to the expertise and experience of the union officers under the circumstances;

(6) whether such inaction was a form of influence and persuasion to continue the work stoppage;

(7) whether the actions of the union representatives were efforts to use the work stoppage as a means of obtaining concessions from the Respondent; and

(8) whether it is realistic to believe that there was a spontaneous mass exodus from the Respondent's plant with no leadership and if there was such leadership, what the identity of the leadership was.

The Court of Appeals found that the District Court's instructions essentially stated that in order for liability to attach to any of the three Petitioners, a finding of ratification or authorization by that body of the conduct of their members was necessary. The Appellate Court found that there was sufficient evidence to support the jury's conclusion that the three Petitioners did ratify or authorize the wildcat strike and that liability for damages sustained by the Respondent were properly assessed against all three Petitioners.

It is too well settled to require discussion that a mass walkout by employees during the term of a collective bargaining agreement containing a no-strike clause constitutes a breach of that agreement. *Local 174, International Brotherhood of Teamsters v. Lucas Flour Co.*, 369 U. S. 95 (1962); *Blue Diamond Coal Co. v. United Mine Workers of America*, 436 F. 2d 551 (6th Cir. 1970), *cert. denied*, 402 U. S. 930 (1970). As this Court noted in *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448 (1957), the core of our federal labor policy is the promotion of industrial peace and stability and if unions can breach collective bargaining agreements with relative impunity, such agreements do not tend to stabilize industrial relations. 353 U. S. at 454.

The District Court found that the terms of the collective bargaining agreement were ambiguous as to the parties to that agreement and left to the jury's determination

whether or not the Grand Lodge and District Lodge were parties. Whether the terms of a contract are ambiguous is a question of law for the Court and when the Court has determined the contract to be ambiguous, those terms are to be determined by the jury as a question of fact. *Scott v. Anchor Motor Freight, Inc.*, 496 F. 2d 276 (6th Cir. 1974); *Tennessee Consolidated Coal Co. v. United Mine Workers*, 416 F. 2d 1192 (6th Cir. 1969). Even though a parent labor organization may not be a formal party to a collective bargaining agreement, both the parent and subsidiary labor organization are proper parties in suits for breaches of the agreement. *Eazor Express, Inc. v. International Brotherhood of Teamsters, etc.*, 520 F. 2d 951 (3d Cir. 1975).

By affording employers a right of action against labor organizations for breaches of collective bargaining contracts, Congress clearly intended to afford employers a remedy for damages suffered as a result of a breach of a collective bargaining contract. S. Rep. No. 105, 80th Cong., 1st Sess. at 16 (1947). Since Congress saw fit to absolve individual union members from any liability for such damages occasioned by an illegal strike, it is particularly appropriate in terms of the national labor policy expressed in the Act that the labor organizations who enjoy the benefits of those agreements and who exercise absolute control over their subordinate organizations be held accountable for the collective actions of their members. *Sinclair Oil Corporation v. Oil, Chemical & Atomic Workers*, 452 F. 2d 49 (7th Cir. 1971).

The liability of the Petitioners for the damages sustained by the Respondent as a result of the wildcat strike occasioned by the unlawful walkout of the Petitioners'

members may be sustained on any one of several bases. First of all, liability can be sustained through the Petitioners' failure to utilize all reasonable action to attempt to effect an end to the illegal walkout. *Eazor Express, Inc. v. International Brotherhood of Teamsters*, 520 F. 2d 951 (3d Cir. 1975). Although a no-strike clause is not a "no-fault" guarantee, it does involve the obligation of the unions to employ any and all reasonable means at their command as might be needed to get their members back to work. *See, Penn Packing Co., Inc. v. Amalgamated Meat Cutters, Local 195*, 497 F. 2d 888 (3d Cir. 1974). Such a holding is responsive to the directives of this Court that the federal courts fashion a body of federal law in accord with the basic goal of Congress to promote industrial peace. *Textile Workers Union v. Lincoln Mills, Inc.*, 353 U. S. 448, 456-7 (1957).

An additional basis for imposing liability on the Petitioners is the so-called "mass action" theory. Under this theory, if a labor organization is functioning as an organization, as an unincorporated association composed of its members, it must be held accountable for the actions of its members and cannot be heard to claim that those members were acting as an independent group of individuals. *Eazor Express, Inc. v. International Brotherhood of Teamsters, supra*; *Wagner Electric Corp. v. IUE, Local 1104*, 496 F. 2d 954 (8th Cir. 1974); *Vulcan Materials Co. v. United Steelworkers*, 430 F. 2d 446 (5th Cir. 1970), *cert. denied*, 401 U. S. 963 (1971).

The third basis upon which liability of the Petitioners should be sustained is that of the common law of agency, expressly made available to the parties to a breach of contract suit by Section 301 (b) and (e) of the Labor-Manage-

ment Relations Act of 1947. 29 U.S. C. §§ 185 (b) and (e). Under such principles, liability may be imposed upon a labor organization where its officers and members have actively participated in an unauthorized work stoppage. *Eazor Express, Inc. v. International Brotherhood of Teamsters, supra; Vulcan Materials Co. v. United Steelworkers of America,* 430 F. 2d 446 (5th Cir. 1970); *Lewis v. Benedict Coal Corp.,* 259 F. 2d 346 (6th Cir. 1958), *modified on other grounds,* 361 U. S. 459 (1960).

Moreover, the actions of the union's officers in taking advantage of the unlawful activity to attempt to gain concessions from the employer may also result in liability to the union. *United Textile Workers v. Newberry Mills, Inc.,* 238 F. Supp. 366 (W. D. S. C. 1965).

Finally, the degree of control exercised by the parent labor organization over its subsidiaries justifies imposition of liability on the parent for the actions of its subordinate organization. *Riverton Coal Co. v. United Mine Workers,* 453 F. 2d 1035 (6th Cir. 1973); *Local Union 984, International Brotherhood of Teamsters v. Humko Co.,* 287 F. 2d 231 (6th Cir. 1961). By exercising total dominion and control over its subsidiary bodies through the provisions of its constitution, the international union establishes a "status of parenthood" that deprives the local union of that "degree of independence associated with, and a necessary ingredient of, an autonomous organization. . . ." *International Brotherhood of Teamsters v. Humko Co.,* 287 F. 2d 231, 242 (6th Cir. 1961). That degree of control was present in the instant case and justifies the imposition of liability on the Petitioner Grand Lodge.

Asserted Procedural Errors.

The procedural errors claimed by the Petitioners even if found to be error by this Court, do not constitute a denial of due process or the right to fair trial of the Petitioners. The Court of Appeals expressly overruled the claimed procedural errors made by the Petitioners. (A-9-10). Petitioners contend that one of the jurors was "placed in obvious fear" by the Court and that another juror deliberated with the hope of obtaining employment for her husband with the Respondent. Neither of such contentions is supported by even a shred of evidence in the record.

The only authority cited for the Petitioners' contentions is totally inapposite to the Petitioners' argument. In *United States v. Harry Barfield Co.,* 359 F. 2d 120 (5th Cir. 1966), the issue decided by the Fifth Circuit Court of Appeals dealt with permissible communications between parties and jurors, a point not even raised by the Petitioners in the instant case.

The Respondent submits that both the District Court and Court of Appeals correctly held that the Petitioners were not denied a fair trial by any occurrences during the course of the proceeding.

CONCLUSION

The Respondent respectfully submits that the Petitioners have wholly failed to sustain their burden of establishing special and important reasons why a Writ of Certiorari should be granted by this Court.

The decision of the Court of Appeals did not involve an important decision of federal law which has not been, but should be, settled by this Court, nor did the Court of Appeals decide a federal question in a way which conflicts with applicable decisions of this Court or of another Court of Appeals on the same matter. The Court of Appeals correctly affirmed the judgment and decision of the District Court and the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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